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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/777,344

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A. Wayne Olson

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7590
06/06/2008
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EXAMINER

SHEER, CRISTINA O

ART UNIT

PAPER NUMBER

3621

MAIL DATE

DELIVERY MODE

06/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/777,344

Applicant(s)

OLSON, A. WAYNE

Examiner

CRISTINA OWEN SHERR

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is in response to applicant's amendment filed March 24, 2008.

Claims 1-7 are currently pending and under examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Payne et al (US 5,713,314), also in view of Walker et al (US 5,794,207).

4. Regarding claim 1 –

Payne discloses

- a) establishing a deposit account for the customer with an escrow account provider; (fig. 7, “new account” at col 6 ln 19-30);
- b) placing an order with a merchant which is essentially the same thing as determining the type of wager, in other words, deciding what to buy and letting the merchant know since a bet or wager is a type of product (col 5 ln 26-56, “user browses and requests a product”);
- c) choosing the type of product, where a bet is a type of product (col 5 ln 26-56, “user browses and requests a product”);
- d) transferring the funds from the deposit account to a prescribed account depending on the product (in this case a wager) (where there are several “merchant computers” each with different

products, which are the equivalent of the different bets or wagers, and where the payer computer send the funds to the appropriate merchant computer depending on what the buyer is buying e.g. col 1 ln 50 - col 2 ln 2).

e) notifying the merchant that funds have been transferred (e.g. col 2 ln 14-16 (where merchant is notified that buyer is authorized to buy)

f) verifying that the product is available, which is the equivalent of verifying the merchant can cover the wager, since a wager is a product (i.e. if you want to buy blue sneakers you have to find out if the store has blue sneakers in your size, we note that the current unexpired advertisement in Payne is the equivalent of having a product be available, which is the equivalent of the merchant having the funds to cover the bet or wager e.g. col 5 ln 25-45);

g) transferring the funds to an action account or escrow during pendency of the gaming action or purchase ("new account" at col 6 ln 19-30); and

h) transferring funds for the wager from the action account to one of the merchant and the customer. (funds to merchant account are the equivalent of payment to merchant, and funds to customer account are the equivalent of sending customer his product e.g. fig 10, col 7 ln 46-51).

5. Although Payne does not deal specifically with bets and wagers, it would be obvious to one of ordinary skill in the art at the time the invention was made that bets and wagers are products to be bought and sold as such, and thus to adapt Payne to obtain the instant application. Further, *KSR* forecloses Appellant's argument that a specific teaching is required for a finding of obviousness. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396. Further, although claim 1 is broad enough to read on a merchant receiving daily orders for its goods and services, which is at least suggested by the teachings of Payne et al. (column 4, lines 50-55). Payne et al. do not explicitly

recite transferring funds to a set aside account subsequent to balance verification. Walker et al. teach transferring funds into a second account (e.g. set-aside account, settlement account) in the amount of a purchase price (column 14, lines 5-7; column 22, lines 1-20). Walker et al. also teach a user sending a signature to an escrow provider to provide verification of delivery (column 22, lines 15-22) and charging a fee by the escrow provider for providing a service (column 20, lines 16-30). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Payne et al. and Walker et al. in order to ensure that a seller delivers purchased goods ('207, column 22, lines 9-12).

6. Regarding claim 2 –

As in h, above, transferring funds for the wager from the action account to one of the merchant and the customer. (in Payne, funds to merchant account are the equivalent of payment to merchant, and funds to customer account are the equivalent of sending customer his product e.g. fig 10, col 7 ln 46-51).

7. Regarding claim 3 –

Payne discloses approving the order or not subsequent to verifying whether product is available which is the equivalent of having the current unexpired advertisement in Payne which is the equivalent of having a product be available, which is the equivalent of the merchant having the funds to cover the bet or wager (e.g. col 5 ln 25-45); thus play is suspended or product cannot be bought and sold if product is unavailable.

8. Regarding claim 4 –

It would be obvious to a person of ordinary skill in the art to resume play or resume sales when product once again becomes available or when merchant once again has the funds where the product is a bet.

9. Regarding claim 5 –

Payne discloses verifying that the product is available, which is the equivalent of verifying the merchant can cover the wager, in other words that there are enough funds in the merchant's account, since a wager is a product (i.e. if you want to buy blue sneakers you have to find out if the store has blue sneakers in your size, we note that the current unexpired advertisement in Payne is the equivalent of having a product be available, which is the equivalent of the merchant having the funds to cover the bet or wager e.g. col 5 ln 25-45);

10. Regarding claim 6 –

As above, a wager is a type of product, and it is obvious that such a product as a wager would include bets or wagers for sports or in a casino.

11. Regarding claim 7 –

As above, Payne discloses wherein there are one or more merchants each with different products for sale. Thus each merchant will have funds transferred to his/her account depending on which product (or wager on casino action or sports book) the buyer or gambler is choosing (where there are several "merchant computers" each with different products, which are the equivalent of the different bets or wagers, and where the payer computer sends the funds to the appropriate merchant computer depending on what the buyer is buying e.g. col 1 ln 50 - col 2 ln 2).

12. Examiner's Note: Although Examiner has cited particular columns, line numbers and figures in the references as applied to the claims above for the convenience of the applicant(s),

the specified citations are merely representative of the teaching of the prior art that are applied to specific limitations within the individual claim and other passages and figures may apply as well.

It is respectfully requested that the applicant(s), in preparing the response, fully consider the items of evidence in their entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Rossides (US 5,749,785) discloses a communications system using bets.

15. Rossides (US 6,443,841) discloses a communications system using bets.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CRISTINA OWEN SHERR whose telephone number is (571)272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew J. Fischer can be reached on (571)272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3621

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cristina Owen Sherr
Patent Examiner, AU 3621

/Jalatee Worjloh/
Primary Examiner, Art Unit 3621